IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of case

Appeal from Order No. 473 of 2006

Date of decision: 26th September, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Initials of Judge

Date

Note:- Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 473 of 2006

1. Kaushalya Devi W/o Late Bhawan Singh.
2. Parkash Singh S/o Late Bhawan Singh.
3. Mahender Singh S/o Late Bhawan Singh.
   All R/o Village Ghigrani, Patti Toli,
   Teshil & District Pithoragarh. …… Appellants

Versus

1. Virender Singh S/o Narayan Singh,
   Owner Jeep No. UP 03 3889,
   Link Road, Pithoragarh.
2. National Insurance Company Ltd.,
   through its Divisional Office,
   5/222 Canal Road, Haldwani,
   District Nainital. …… Respondents

Mr. Neeraj Upreti, Advocate for the appellants.
None for respondent No. 1.
Mr. Prabhat Pandey, Advocate for respondent No. 2.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimants' appeal under Section 173 of the Motor Vehicles Act for enhancement of the compensation awarded by Motor Accident Claims Tribunal / District Judge, Pithoragarh vide Award dated 21.06.2006 passed in M.A.C. No. 19 of 2005.

2. The claimants, who are unfortunate widow and sons of deceased Bhawan Singh @ Bhagwan Singh, claimed compensation of Rs. 8,24,000/- for his death in the motor accident on 23.02.2004 when the Jeep bearing registration No. UP03-3889, in which he was travelling, met with an accident due to the rash and negligent driving of its driver and fell in a gorge resulting in multiple serious injuries to Bhawan Singh @ Bhagwan Singh, who, when taken to the hospital for treatment, was declared dead. The claimants pleaded that Bhawan

Singh @ Bhagwan Singh was aged about 53 years on the date of the accident and used to earn Rs. 6000/- per month from agriculture and by selling milk.

3. The owner and the insurer of the offending vehicle Jeep contested the claim and denied their liability to pay compensation to the claimants. The owner of the offending vehicle Jeep though admitted the fact of the accident, denied that the accident occurred due to the rash and negligent driving of the Jeep driver. The insurer of the Jeep, on the other hand, denied its liability to pay compensation on the plea that the Jeep was being plied in breach of the policy conditions.

4. The claimants examined PW1 Kaushalya Devi, PW2 Shyam Dutt Bhatt and PW3 Dhani Lal Patwari in support of their claim, whereas the owner of the Jeep examined himself as DW1 and the insurer of the Jeep did not examine any witness.

5. The Tribunal, on the evidence led by the parties, held that Bhawan Singh @ Bhagwan Singh died on account of the injuries sustained by him in the motor accident on 23.02.2004; the accident occurred due to the rash and negligent driving of the driver of the Jeep; and the insurer of the Jeep was liable to pay compensation to the claimants.

6. As the evidence led by the claimants about the income of the deceased was not found reliable, the Tribunal assessed his income at Rs. 15,000/- per annum on the basis of the notional income prescribed in the Second Schedule under Section 163-A of the Motor Vehicles Act. After deducting 1/3rd of the income of the deceased as his personal expenses, the claimants' dependency was assessed at Rs. 10,000/- per annum. By multiplying the annual dependency of Rs. 10,000/- with the multiplier of '11', the compensation was worked out to Rs. 1,10,000/-. The Tribunal awarded further sums of

Rs. 5,000/- towards Loss of Consortium to the widow and Rs. 2,000/- for Funeral Expenses and thus, a total sum of Rs. 1,17,000/- was awarded as compensation to the claimants for the death of Bhawan Singh @ Bhagwan Singh in the motor accident. The Tribunal, further, directed the insurer of the Jeep to pay interest at the rate of 7% per annum in the event of its failure to pay the amount of compensation to the claimants within a period of two months from the date of the Award.

7. Mr. Neeraj Upreti, the learned counsel for the appellants submitted that the Tribunal has erred in assessing the income of the deceased at Rs. 15,000/- per annum only; in awarding low compensation of Rs. 1,17,000/- only; and in not awarding any interest on the amount of compensation to the claimants and in directing a conditional payment of interest in the event of insurer's failure to pay compensation to the claimants within a period of two months of the passing of the Award.

8. Mr. Prabhat Pandey, the learned counsel for respondent No. 2 National Insurance Company Ltd., the insurer of the offending vehicle Jeep, on the other hand, supported the Award and submitted that as the claimants could not establish the income as pleaded by them, the Tribunal was left with no other option but to assess the income of the deceased on the basis of the notional income prescribed in the Second Schedule and as such, the compensation of Rs. 1,17,000/- awarded by the Tribunal does not call for any enhancement in this appeal.

9. The findings recorded by the Tribunal that deceased Bhawan Singh @ Bhagwan Singh died on account of the injuries sustained by him in the motor accident on 23.02.2004; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Jeep; and the insurer of the Jeep was liable to pay compensation to the

claimants have, now, attained finality as the respondents have not filed any appeal against the Award.

10. Deceased Bhawan Singh @ Bhagwan Singh was 53 years of age on the date of the accident as his date of birth, brought on record, is 05.07.1951. The claimants though pleaded that the deceased used to earn Rs. 6,000/- per month from agriculture and by selling milk, no reliable evidence was adduced before the Tribunal to establish the said income of the deceased. In this state of evidence, we do not find any fault in the approach of the Tribunal in discarding the evidence of the claimants about the income of the deceased. Nevertheless, the assessment of the income of the deceased by the Tribunal at Rs. 15,000/- per annum on the basis of the notional income prescribed in the Second Schedule under Section 163-A of the Motor Vehicles Act requires reconsideration, as the same is on the lower side. Considering that the deceased was aged about 53 years; the notional income of Rs. 15,000/- per annum in the Second Schedule under Section 163-A of the Motor Vehicles Act was prescribed in the year 1994; and the accident in the present case took place in February 2004, the income of the deceased, in our view, ought to have been assessed at Rs. 30,000/- per annum. We therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 30,000/- per annum

11. By deducting 1/3rd of Rs. 30,000/- as the personal expenses of the deceased, the claimants' dependency is assessed at Rs. 20,000/- per annum. The multiplier of '11' selected by the Tribunal, considering that the deceased was aged about 53 years and his widow (Claimant No. 1 Kaushalya Devi) was 48 years of age on the date of the accident, is appropriate. By multiplying the annual dependency of Rs. 20,000/- with the multiplier of '11', the compensation works out to Rs. 2,20,000/-. By adding further sums of Rs. 5,000/- awarded by the Tribunal towards Loss of Consortium to the widow and Rs. 2,000/- for Funeral Expenses, the claimants become entitled to

receive a total sum of Rs. 2,27,000/- as compensation for the death of Bhawan Singh @ Bhagwan Singh in the motor accident.

13. The Tribunal, apparently, has fallen into error in not awarding any interest to the claimants on the amount of compensation and in directing only a conditional payment of interest in the event of insurer's failure to pay the amount of compensation within a period of two months from the date of the Award. The Tribunal, therefore, has deprived the claimants of the amount of interest, which was otherwise payable to them. From the Award, we gather that the claimants have been found responsible to some extent for the delay in the disposal of the claim petition. The claim petition was filed on 30.03.2005 and the same was finally decided vide Award dated 21.06.2006. The present appeal for enhancement was filed by the appellants on 17.08.2006 and is being finally decided today on 26.09.2006 i.e. within 1 ½ months of its filing. Considering all the above relevant broad features of the case, we deem it proper to quantify the amount of interest at Rs. 10,000/-.

14. For the foregoing reasons, the appeal filed by the appellants for enhancement of the compensation is allowed in part. The compensation of Rs. 1,17,000/- awarded by the Tribunal is enhanced to Rs. 2,27,000/-. In addition, the claimants are entitled to receive a mump sum of Rs. 10,000/- towards Interest on the above amount of compensation. Respondent No. 2 National Insurance Company Ltd. is directed to pay a total sum of Rs. 1,20,000/- (Rupees One Lakh and Twenty Thousand only) [Rs. 1,10,000/- enhanced compensation + Rs. 10,000/- towards interest] within a period of two months from today.

15. No order as to costs.

(Rajesh Tandon, J.) 26.09.2006

(Rajeev Gupta, C.J.) 26.09.2006

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